

Via Email: bashbaugh@ashbaughbeal.com

May 10, 2023

Becki Ashbaugh
Ashbaugh Beal

Re: Phase 2 final plat process

Dear Becki:

You have asked for our input regarding the status of Phase 2 final plat approval and our desired next steps. As the City is aware, we have been working on various permitting actions using the Special Master's recommendation as guidance. The matters the Special Master asked for further work on are:

- Establish the availability of water utility access – specifically complete review with Bonneville Power Administration (BPA) and Puget Sound Energy (PSE) and ensure route falls within established utility access routes (rights of ways or easements).
 - City Heights has completed review and approval processes with both BPA and PSE, those approvals have been conveyed to staff.
 - For the reasons discussed below, City Heights has re-designed the water main route to run through existing rights-of-way.
- Show rights to construct or bond for secondary road access.
 - City Heights owns the underlying property for Montgomery Avenue and otherwise has recorded easement rights for those offsite portions of the roadway, running through Kittitas County. I discuss each of these components in more detail, below.

In sum, City Heights has spent the past few weeks completing those further steps that the Special Master recommended. The Phase 2 final plat is ready for approval, i.e. determination of consistency. More specifically, Phase 2 final plat is subject to the Development Agreement Implementing Approval process, Appendix Q. Step 4, therein, provides that the City Planner makes the consistency determination for the given Approval, here the final plat. Once we have that determination, we can then proceed with consideration of what should be bonded versus constructed during this 2023 construction season.

With respect to the Zone 3 water main (and the Phase 2 final plat generally), the City Heights project team has been meeting regularly with City staff. The original route for that main was designed based on the City's original preference, using the same route as the City's existing

utilities. City Heights has been prepared to follow the same route as the existing water utilities. However, at the ‘eleventh hour,’ the City admitted that it never obtained the right-of-way dedication it needs for its own utilities from the previously-approved Cle Elum Pines subdivision. We attempted to assist the City to obtain that right-of-way for several months, but the City has still not completed that right-of-way dedication.

As a result, City Heights has redesigned its water main system, routing that now through the existing rights of way that the City does have, as well as Washington State DOT right of way. City Heights submitted those permits in April and the City is actively reviewing its permit. This is a relatively straightforward permit; equivalent permits have previously taken the City roughly two weeks to process. Therefore, we reasonably anticipate the City will complete its review and issue this permit any day. Again, the only reason for this additional permitting work is because the City never obtained requisite right-of-way from a different subdivision for its utilities.

Separately, City Heights has now also completed review with both Bonneville Power Administration (“BPA”) and Puget Sound Energy (“PSE”). City staff is aware that each respective agencies’ review is now complete and authorizations/approvals granted. No further work is necessary here.

With respect to secondary access, we have long held easements for completing the current alignment of Montgomery Road. Those are attached and longstanding. The County is actively completing permitting with City Heights. As you are already aware, we also have filed legal action to require removal of an existing drainfield that, in part, was built within the easement area. As you likely know, easements can be used until needed by the holder, at which time any improvements must be removed. *Thompson v. Smith*, 59 Wn.2d 397, 407, 367 P.2d 798 (1962); *Beebe v. Swerda*, 58 Wn. App. 375, 384, 793 P.2d 442 (1990). Finally, Kittitas County is in the process of completing its construction permitting review. Under the Development Agreement, the City has recognized the County’s separate legal authority for that permitting.

In sum, again, Phase 2 final plat is ready for consistency review and approval under the Development Agreement. We believe this is a determination the City can agree with us on. Once that is complete, again, we can proceed to consideration of what improvements can be built during this construction season versus bonded for. As you know, continued delay is costing City Heights significant financial damage. The more delay City Heights is subject to, the more difficult it is to for the parties to settle without the pending damages arbitration under the standing ruling against the City from Judge Kallas. It would be a significant showing of good faith for the City to work with City Heights on a consistency determination and approval of the Phase 2 final plat under Steps 4 and 5 of the Development Agreement, Appendix Q.

Sincerely,



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